DEFENDANT'S PAPER BOOK.

History of the Case.

T. F. Cronise *vs.* Estellina Cronise and H. C. Dallett.	In the Supreme Court of Pennsylvania.

The parties to this case were all residents of the City of Philadelphia. Estellina Cronise is the only daughter of Henry C. Dallett. She was born in Philadelphia, where she has resided with her parents all her life. Titus F. Cronise is a native of Maryland, and resided in Philadelphia many years before his marriage, which took place on the 29th of November, 1860. He was engaged in business as a broker, and was introduced to Miss Dallett by Henry A. Fleming, the brother-in-law of J. S. Cronise, who resides in New York. Mr. Fleming had been a clerk in the counting-house of Mr. Dallett and thus became intimate with the family. Mr. Fleming was in the employment of Mr. Cronise when he introduced the latter to Mr. Dallett's family. Previously to the marriage and after his engagement to Miss Dallett Mr. Cronise was somewhat embarrassed in his business, and Mr. Dallett and Jacob S. Cronise were called upon for advice and assistance. Jacob S. Cronise represented that he had examined the books and papers of his brother, that the embarrassment was but of a temporary character, and would be relieved by a loan of $10,000, one half of which was subsequently furnished by Mr. Dallett with the understanding that the brother would furnish the other half. The business went on for a time until December, 1861, when a crisis came, and on the 22d of that month Mr. Cronise suspended payment, having postponed the demands of his creditors for a

time by informing them that he was going to marry into a wealthy family and they would then be satisfied.

Although he was well aware of the certainty of his failure previous to the fatal day, he bought and sold largely on that day, giving his checks in payment. On Saturday the 22d of December, he drew largely on the Farmers' and Mechanics' Bank, knowing that his funds there were exhausted, and on the Monday following, these checks came back protested. He also, on the same day, sold drafts on New York and Baltimore which came back dishonored. Frank C. Clark, a witness called originally by the complainant, testified as follows :

"My impressions are that Drexel was the first party who arrested him. There were two or three on the same day, and one on the next day, as near as I can remember. Mr. Drexel arrested him on the ground of fraud, for selling him Exchange on New York, without any funds to meet it, the day before the failure. I think the amount was five thousand dollars, but I am not positive as to that. Johnston & Bros., of Baltimore, also arrested him. Mr. Cronise drew on Johnston & Bros., and they paid the draft, but when they drew back upon Cronise their draft was not honored. The amount I do not exactly remember, but it was a number of hundreds of dollars ; I think it was at least eighteen hundred dollars. The Farmers' & Mechanics' Bank arrested him. He overdrew his bank account there, and his checks were paid. I think the amount there was in the neighborhood of five thousand dollars ; it might have been a little more. This case was heard before Judge Sharswood, and was compromised, I believe. There was a Savings Institution as near as I can remember, out in Allegheny City, that sent some gold to Cronise some four or five days before his failure. They sent the specie to be sold, and the proceeds to be placed to their credit with some banker or broker, I don't remember who. He did not place the proceeds as they had directed and they wrote him a letter threatening to sue him. The proceeds were placed to his credit on our books. They went

into the business fund. Mr. Mitchell was a depositor to the amount of two thousand or twenty-five hundred dollars. His funds went along with the rest. I am not aware that he got any of his money back. There was a suit brought by Rowland & Irwin, the flour men on Broad street. They sold over the counter of Mr. Cronise gold on the morning of the failure, and received a check on the Farmers' & Mechanics' Bank. The bank did not pay the check. They deposited the check, and it came back to them the next day. This sale was made before twelve o'clock on the day of the failure. There was no other case of arrest that I know of. There was no other arrest here—Johnston made an arrest in Baltimore."

Numerous prosecutions for obtaining money by false pretenses took place. Fearing the creditors whom he had wronged, he fled to New York, whither he was pursued by some of them. He went on board a steamer bound for San Francisco, and was secreted in the *pantry* of the vessel whilst the officers of justice were on the wharf. The vessel sailed on the 11th of February, 1861.

His wife, from whom his crimes were purposely concealed, believed his failures but the misfortunes of business, and ardently attached to him, continued to correspond with him until sometime in the Autumn of 1862. Having, in some mode, come to a knowledge of his criminal conduct, she never communicated with him afterwards. He at no time furnished her any means until after she ceased to correspond with him, when he sent a small draft or two which were returned to his brother. At no time was she asked to join him in California.

After a separation of more than three years, in the beginning of 1864, she took steps to obtain a divorce. She applied to counsel, who informed her that relief could only be had from the Legislature of Pennsylvania. Some delay occurred in making her application in consequence of a difficulty in electing a Speaker of the Senate which rendered the organization of the Legislature for a long time

doubtful. Her case was fully and patiently heard before the proper committees of both Houses and the Houses themselves, and eventually resulted in the passage of the Act now in question.

Memorandum of Dates, &c.

Novem. 29th, 1860.		The marriage of Mr. Cronise to Miss Dallett took place.
Decem. 22d, 1860.		Titus F. Cronise failed.
Feb. 11th, 1861.		Titus F. Cronise sailed from New York.
March 9th, 1864.		The memorial of Estellina Cronise to the Legislature was affirmed to, (page 27.)
March 16th,	"	Mr. Cochran read in place in the House of Representatives an Act to annul the marriage, (page 57.)
March 19th,	"	H. C. Dallett's affidavit was made, (page 32.)
March 21st,	"	The memorial was presented.
March 30th,	"	The bill was reported.
April 11th,	"	The bill was recommitted.
April 23d,	"	The Committee was discharged and the bill passed the House of Representatives by a vote of 51 to 16.
April 23d,	"	The bill was presented to the Senate for concurrence.
April 26th,	"	J. S. Cronise's affidavit was made and subsequently presented to the Senate Committee, (page 34.)
April 26th,	"	An additional affidavit was made by him.
April 27th,	"	Mr. Hiester Clymer from the Committee on Judiciary reported the bill.
April 29th,	"	The bill passed the Senate by a vote of 17 to 4, and on the same day it was approved by the Governor.

Brief of the Argument for the Defendants.

The bill of the complainant sets forth that the memorial of respondent was presented to the Legislature without any intimation to him of any such intention or notice when the application was made," "without any due and legal notice to him or opportunity given to him to contest the allegations of the memorial and affidavit," and "that the subject-matter of the complaint was one expressly within the statutory jurisdiction of the Court of Common Pleas of Philadelphia county, and under the Constitution of Pennsylvania was not within the power of the Legislature thereof," and that therefore the said Act of Assembly, &c., is unconstitutional and void.

That the respondents fraudulently combined and confederated together without notice, &c., of their intention, &c., purposely on their part taking advantage of the complainant's *temporary* absence from Pennsylvania to procure said Act, without an *opportunity afforded him* of being heard in his own defence, and that the said proceeding being *ex parte* and a fraud on his marital rights is on that account illegal and void. The bill concludes by asking an *injunction* to *restrain the respondents* from *pleading* the *said act in bar* of the complainants' conjugal rights, &c., and that this Court will decree and pronounce the said Act unconstitutional and void.

To this the respondents answered, admitting the marriage, setting forth the pecuniary difficulties of complainant, his escape from the State, his wife's subsequent discovery of his criminal conduct, her determination to have no further intercourse with him, the cessation of correspondence, her resort to the Legislature for a divorce, and what took place before the Legislature, ending with the passage of the Act which is averred to be constitutional and valid.

The following is the language of a part of the answer:

"And the said Estellina further answering saith, that at no time since their separation, has the said complainant invited her to cohabit with him, nor has he ever heretofore pretended that he was able to maintain her, though true it is, that more than two years after their separation, and after she had made up her mind to have no further intercourse with him, he sent to her some three or four drafts for about thirty-three dollars each, which were not used by her but returned to him, prefering still to remain dependent upon her father. Of the present ability of the said complainant to maintain and support her she knows nothing, but she has been informed and verily believes that he has failed in business since he went to California, and that he well knew from the cessation of her correspondence and her rejection of his letters, what her purposes were, and accordingly long before the presentation of her said memorial to the Legislature, he had counsel employed in Philadelphia to watch her movements with respect to obtaining a divorce and to defend against the same.

"When the parties appeared before the Committee of the House of Representatives, and the respondent, Henry C. Dallett, learned that the complainant had employed counsel, knowing him to be a gentleman of eminence in his profession, he deemed it proper to call upon him, and, in the interview which took place, he learned that counsel had been employed by the complainant several months previously, that is to say, in the month of June, 1863, expressly for the purpose of opposing any application for a divorce which his daughter, the said Estellina, might make. Accordingly, the divorce was opposed by counsel, acting for and on behalf of the complainant, in every stage of its progress, and no paper was submitted to the committees, and no proof was made, without the knowledge of the counsel, who had subsequently taken charge of the case on the part of the complainant. It was not an *ex parte* proceeding, and it was not in fraud of any marital rights of the complainant.

"And the said Estellina further states, that she has been informed, and verily believes, that the Courts of Pennsyl-

vania have no statutory or other jurisdiction of such a case of application for a divorce as was presented to the Legislature on her behalf, and proven by her. That the deceptions practiced by the said complainant were not of the character of fraud intended by the Statute to give jurisdiction to the Courts: that he had not been convicted and sentenced to more than two years' confinement in prison for any felony, and had not maliciously and wilfully deserted her within the meaning of the Statute, nor been guilty of the other acts mentioned in the Statutes of Pennsylvania as grounds of divorce; and that therefore she had no other source of relief from her unfortunate condition than an application to the Legislature, which, upon a hearing of the facts, granted her prayer; but upon what ground or feature of her case the General Assembly based its action, she is unable to state. She is informed and believes that her counsel, before said committees, admitted that the misrepresentations of the complainant before the marriage did not amount to the fraud contemplated by the Act of Assembly, &c., but they did insist that his illegal and dishonest practices in business subjected him to criminal trial and imprisonment, and forced him to abscond, thereby making it impossible for the complainant and her to cohabit together, and that the said divorce ought to be granted upon the ground of those dishonest practices on the part of the said complainant, which were set forth under the second head of her memorial, and his separation from her under such circumstances as made their future cohabitation impossible. She has no doubt that the Legislature granted the divorce upon this distinctive ground, as her proof was directed to its support. The said defendants, therefore, aver that the said divorce was asked for and, as they believe, was granted upon the ground that the said complainant had, by reason of his aforesaid practices in business, rendered himself liable to trial and imprisonment, and was forced to abscond and remain away from his wife, making future cohabitation impracticable; and although this did not amount to a malicious desertion, it constituted a de-

sertion more inexcusable than if it had been malicious, for the separation was as complete as if the complainant had intended to desert her, and subjected her to all the inconveniences and consequences of a malicious desertion."

From the pleadings it will be seen that two questions arise for determination in this Court:

Does the alleged want of notice to the complainant under all the facts of the case, authorize the Court to pronounce the Act void?

The application was anticipated by the complainant from the time his wife ceased to correspond with him. See testimony of J. S. Cronise, pages 7–8 and 37; Mr. Weil, page 17; and Mr. Moore, page 61. If notice were necessary, it was dispensed with. He appeared by counsel, who had the bill sent back to the Committee of the House; appeared before the Committee, presented affidavits, letters, &c., and argued the case. After the bill passed the House, he also appeared by his agent before the Committee of the Senate, and presented affidavits to that Committee. The question of Legislative power, as well as the merits of the application, were brought before both branches of the Legislature.

The question of notice is of no moment where the party appears and has sufficient opportunity to be heard. But how far will this Court go in making inquiry as to the process by which a bill becomes a law? Is not the Legislature the proper and only judge as to whether the parties in interest are properly before them or have had a sufficient opportunity to be represented and heard?

The action of the Legislature was *legislative* and *not judicial*, and therefore the rules governing judicial proceedings in the Courts as to notice or preliminary process are not applicable. No notice to persons whose interest may be affected by legislation is required to give effect to the laws passed. The constituency being all represented are presumed to have

their interests properly attended to. However proper it may be where private interests alone are concerned that notice should be required (as in proceedings before the Courts) yet it has been deemed unnecessary in such cases as this; and we are informed by the testimony (page 60) that the divorce committees of our Legislature have no written rules in relation to their action in considering divorce cases. It may well be asked what rules for notice could be established that could reach a party who is a fugitive from justice. Having put himself out of the reach of personal service by his own improper conduct, he has no right to complain of want of notice. In the case of Wright *vs.* Wright, 2d Maryland Reports, page 429, it was decided that the Act of the Legislature of that State, divorcing the parties to the cause from the bond of matrimony, was a constitutional and valid exercise of legislative authority, and that no notice was necessary.

The case of Jones *vs.* Jones, 2 Jones, 354, cited by appellant, only established that where the rights of parties depend on the validity of a divorce granted by the Legislature, evidence is admissible to show that the causes for which it was granted were within the jurisdiction of the Courts, and hence that the Legislature, under the constitutional provision on the subject, had no power to grant it. We admit this, and the case establishes nothing more.

We concede that the Legislature have power upon the subject only where it has not been given to the Court.

Outside of the jurisdiction given to the Courts, the Legislature is as supreme as Parliament, and may divorce in such cases without accountability to or control by any other power.

The great error of the argument on the other side is the effort to put the contract of marriage on the footing of contracts in relation to property, and to bring it within the provision of the Constitution of the United States, which says that "no State shall pass any law impairing the obligation of contracts." That this clause does not impair the

power of a State legislature over the subject of divorce is well settled. (See Butler *vs.* Penn'a, 10th Howard, 402.)

White vs. *White*, (Judge Mason's opinion,) 5 Barbour's N. Y. R., pp. 477–481.

Noel vs. *Ewing*, 9 Indiana Rep. p. 38. Marriage is not simply a contract, but a public institution not reserved by constitutional provisions from legislative control, and all rights in property growing out of the marriage relation are alike subject to regulation by the legislative power. Thus the legislature is competent to increase or diminish dower, or to substitute a larger estate for it, or even to abolish dower inchoate altogether. (Melizett's appeal, 17 Penn. 449, &c.)

As between marriage and other contracts the distinction in part seems to be this, that marriage is not technically a contract within the protection of the Constitution of the United States.

In *Dartmouth College* vs. *Woodward*, 4 Wheaton, 629, Chief Justice Marshall says:

"The provision of the Constitution never has been understood to embrace other contracts than those which respect property or some object of value, and confer rights which may be asserted in a court of justice. It never has been understood to restrict the general right of the legislature to legislate on the subject of divorces. Those acts enable some tribunal, not to impair a marriage contract, but to liberate one of the parties because it has been *broken by the other*. When any State Legislature shall pass an act annulling all marriage contracts, or allowing either party to annul it, without the consent of the other, it will be time enough to inquire whether such an act be constitutional."

Maguire vs. *Maguire*, 7 Dana's K. R., 181. The marriage contract differs from all other contracts and cannot be dis-

solved by the parties; but may be by the sovereign power exercised in legislative or judicial form, as the cause may justify, with or without the consent of both parties, and is not within the constitutional inhibition of legislative acts impairing the obligation of contracts.

Dickson vs. *Dickson*, 1 Yerger (Tenn) R. 110. Marriage is an institution so different from ordinary contracts that society has even more interest in it than the parties themselves.

Starr vs. *Pease*, 8 Conn. R. 541. *Very decided* to the same point.

Crane vs. *Meginnis*, 1 Gill & Johnson's Maryland R. 463. Divorces within this State from the earliest time have emanated from the general assembly, and can now be viewed in no other light than as regular exertions of legislative power.

This interpretation of the law has been acted upon throughout the Union, and thousands of legislative divorces have been granted upon the recognition of its correctness.

Although an argreement to marry is a contract, the violation of which is punished by means of an action at law, yet the marriage itself is more. It differs from other contracts in this, that the rights, obligations, or duties arising from it are not left entirely to be regulated by the agreement of parties, (Bishop on Divorce, placit 31, 32, 33, 34, 36, 36 (a),) but are, to a certain extent, matters of municipal regulation over which the parties have no control by any declaration of their will, &c. *It cannot be dissolved by mutual consent like other contracts.* The fact that parties enter into marriage only over the threshold of a contract furnishes the only foundation for the exceedingly loose definition which calls it a contract. Judge Story says, (Story on Conflict of Laws, placit 108, note,) marriage is not to be treated as a mere contract in the ordinary sense of the word. It is rather to

be deemed an *institution* of society founded upon the consent and contract of the parties, and in this view it has some peculiarities in its nature, character, operation, and extent of obligation different from what belongs to ordinary contracts.

Again he says, ib., p. 200: "Marriage is not treated as a mere contract between the parties subject as to its continuance, dissolution and effects to their mere pleasure and intentions, but it is treated as a civil *institution*, the most interesting and important in its nature of any in society."

Again he says, ib., placit. 201: "It is deemed by all modern nations to be within the competency of legislation to provide for such a dissolution and release in some form, and for some causes."

Mr. Bishop, in his work on divorce, speaking of legislative divorces, says: "We shall examine them in their order, premising that substantially the conclusion arrived at is that as a general proposition, the several legislatures may dissolve by special act the marriage, yet may not include in the act any collateral matter as a direction for the payment of alimony." He then reviews the law upon the question whether they are to be considered legislative, judicial, or retrospective acts; see placita, 771, 774, 775, 776, 784, 785, 786, 787, 788, 790, 791, 794. In *Levin* vs. *Steatir*, 2 Greene, (Iowa,) 604, it was said, that the burthen of proof lies with the party calling in question the legislative divorce to show that it was for a cause within the authority of the Courts.

An examination of these authorities we think must satisfy the Court that the act in question was a valid act of the legislature, and that the legislature in passing it were not bound by the rules of law which regulate the proceedings of judicial tribunals. They inquire in their own way as to the merits of the proposed legislation, and act accordingly.—It is proper to add, that although throughout the proceedings before the legislature there was a constant endeavor on the part of the complainant to obtain delay on the allegation of

the want of notice and the power to dispute the grounds of divorce set forth in the memorial, nevertheless no allegation or affidavit was made as to inability to get proof at that time, and no witnesses were named who could make the proof. Every facility for this purpose was offered. The time was ample, inasmuch as all the proof was probably in the State of Pennsylvania, and Mr. Hickman's testimony shows that less than twenty-four hours was then sufficient for telegraphic communication with San Francisco; see p. 53.

Assuming that the want of notice spoken of does not invalidate the act, we come to the question—*Have the Courts jurisdiction of such a case?* Article 1, Section 14, of the Constitution of Pennsylvania, says, "The legislature shall not have power to enact laws annulling the contract of marriage in any case where by law the Courts of this commonwealth are or may hereafter be empowered to decree a divorce." By act of March 13, 1815, Courts have power in cases of (1.) Impotency. (2.) Second marriage, former wife or husband living. (3.) Adultery. (4.) Wilful and malicious desertion, &c., for two years. (5.) Cruel and barbarous treatment, &c., of wife by husband.—6 Casey, 417. By act of May 8, 1854, jurisdiction is given, (1.) *Where the alleged marriage was procured by fraud, force, or coercion, and has not been subsequently confirmed by the acts of the injured party.*"—Purdon, 346, sect. 7. (2.) Conviction of felony and sentence by the proper Court to county prison or penitentiary for *any term exceeding two years.* (3.) Cruel and barbarous treatment of the husband by the wife.

There having been no malicious desertion, or conviction and sentence for a felony, it follows, that the only possible ground upon which it can be contended in this case, that the Courts have jurisdiction, is because of this statement in the memorial, to wit: "That long continued and artfully planned deceits were practised upon her by her said husband and others, influenced by him, or connected with him, to entrap her into a contract of marriage." See page 4 of the answer.

What were these deceits? Do they constitute the fraud intended by the act of May 8, 1854. False representations as to his property and business, his real estate, said to be worth $20,000, net balance in business $16,000. These were the representations made to the father of his wife.

Chancellor Kent says, 2 Kent, 77. It is well understood that error and even disingenuous representations in respect to the qualities of one of the contracting parties, as to his *condition*, *rank*, *fortune*, *manners* and character, would be insufficient. The law makes no provision for the relief of a blind credulity, however it may have been produced. Wakefield *vs.* Mackay, note to Wilson *vs.* Brockley, 1 Phillimore, 137. (Opinion of Sir William Scott.) "Error about the family or fortune of the individual though produced by disingenuous representations does not at all affect the validity of the marriage. A man who means to act upon such representations, should verify them by his own enquiries. The law presumes that he uses due caution in a matter in which his happiness for life is so materially involved, and it makes no provision for the relief of a blind credulity however it may have been produced."

Benton *vs.* Benton, 1 Day, 111. "The term fraudulent contract in the statute concerning divorces included those causes only which render the marriage unlawful from the beginning."

Stair's Institutions by More, vol. 1, p. 14.

Shelford on Marriage and Divorce, 222. 33 Law Library, 184.

2 Haggard's Consistory Reports, 182–248.

The alleged frauds, if proven, would not have been sufficient in a Court, to warrant the granting of a divorce.

If two grounds were presented to the Legislature, one within the jurisdiction of the Courts, the other not—cannot the Legislature found an act of divorce upon that which is not within the jurisdiction of the Courts; and is it not the legal and necessary presumption, that the Legislature have done so?

Before a law can be pronounced unconstitutional its incompatibility with the Constitution must be clear, and not merely left in doubt. 6 *Cranch*, 87.

[NOTE.—In the House and in the Senate, the Bill was in charge of gentlemen of the most unsullied reputation for integrity, and entirely undeserving of the censure which might be implied from the last remark contained in the Complainant's paper book. See the testimony of Thomas Cochran, Esq., p. 54, and of Hiester Clymer, Esq., p. 59.]